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8 ***Counsel for Plaintiff and the Proposed Class***

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 FRANK HIRSCH, on behalf of himself and all others)
12 similarly situated,)

13 Plaintiff,)

14 v.)

15 NETFLIX, INC., WAL-MART.COM USA LLC, and)
16 WAL-MART STORES, INC.)

17 Defendants.)

Case No. 09-0375 EDL

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED
PURSUANT TO CIVIL L.R. 3-12
AND 7-11**

18 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

19 PLEASE TAKE NOTICE that, pursuant to Civil Local Rules 3-12 and 7-11, Plaintiff
20 Frank Hirsch submits this administrative motion for the Court to consider whether the case
21 captioned *Hirsch v. Netflix, Inc., et al.*, Case No. 09-0375 EDL, a putative class action filed on
22 January 27, 2009, should be related to *Andrea Resnick, et al. v. Walmart.com USA LLC, et al.*,
23 Case No. 09-cv-0002 PJH, filed on January 2, 2009, the low-numbered action also pending in
24 this District. The *Resnick* action has been assigned to the Honorable Phyllis J. Hamilton. In
25 addition to the *Resnick* action, other related actions pending in this District include: *O'Connor*
26 *v. Walmart.com USA LLC, et al.*, Case No. 09-cv-0096; *Endzweig v. Walmart.com USA LLC, et*
27 *al.*, Case No. 09-cv-0111; *Schmitz v. Walmart.com USA LLC, et al.*, Case No. 09-cv-0116;
28

ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED

CASE NO. 09-375 EDL

1 *Lynch, et al. v. Walmart.com USA LLC, et al.*, Case No. 09-cv-0138; *Groce, et al. v. Netflix,*
2 *Inc., et al.*, Case No. 09-cv-0139; *Sivek v. Walmart.com USA LLC, et al.*, Case No. 09-cv-0156;
3 *Faris v. Netflix, Inc., et al.*, Case No. 09-cv-0180; *Slobodin v. Netflix, Inc., et al.*, Case No. 09-
4 cv-0225; *Anthony, et al. v. Walmart.com USA LLC, et al.*, Case No. 09-cv-0236; *Polk-Stamps v.*
5 *Netflix, Inc.*, Case No. 09-cv-0244; *Sheeler v. Netflix, Inc., et al.*, Case No. 09-cv-0274;
6 *Chapman v. Netflix, Inc., et al.*, Case No. 09-cv-0294; *Orozco v. Netflix, Inc., et al.*, Case No.
7 09-cv-0297; *Landels, et al. v. Netflix, Inc., et al.*, Case No. 09-cv-0340; *Grime v. Netflix, Inc., et*
8 *al.*, Case No. 09-cv-0349; *Meyer v. Walmart.com USA LLC, et al.*, Case No. 09-cv-0361;
9 *Randall v. Walmart.com USA LLC, et al.*, Case No. 09-cv-0368; *Miscioscia v. Netflix, Inc., et*
10 *al.*, Case No. 09-cv-0377; and *Chatelain v. Netflix, Inc., et al.*, Case No. 09-cv-0391.

11 The *O'Connor, Endzweig, Schmitz, Lynch*, and *Groce* actions were ordered related to
12 the *Resnick* action on January 16, 2009. The *Sivek, Faris*, and *Anthony* actions were ordered
13 related to the *Resnick* action January 26, 2009. All of these related actions have been assigned
14 to the Honorable Phyllis J. Hamilton. The *Slobodin, Polk-Stamps, Sheeler, Chapman, Orozco,*
15 *Landels, Grime, Meyer, Randall, Miscioscia*, and *Chatelain* actions have not been related to the
16 *Resnick* action as of the filing of this Administrative Motion.

17 All the above-referenced actions involve substantially the same transactions, events,
18 questions of law, and allege essentially the same violations of federal antitrust law against the
19 same set of Defendants. The suits allege that the Defendants unlawfully agreed not to compete
20 in the markets for both online DVD rentals and sales of new DVDs, and that Netflix
21 monopolized the online DVD rental market. Defendants' actions are alleged to have harmed
22 customers who were Netflix subscribers by causing them to pay more for their subscriptions
23 than they would have paid absent Defendants' illegal market allocation agreement.

24 It appears likely that there will be an unduly burdensome duplication of labor and
25 expenses and potentially conflicting results if the cases are heard before different judges.

26 Given the similarities of the related actions, assignment of the cases to a single judge
27 will conserve judicial resources and promote efficient determination of the actions while

1 avoiding potentially conflicting results. All related actions currently pending in this District are
2 at a preliminary stage and, therefore, assignment to a single judge would not prejudice any
3 party. Accordingly, Plaintiff Frank Hirsch respectfully requests that the action entitled *Hirsch*
4 *v. Netflix, Inc., et al.* be deemed related to *Resnick, et al. v. Walmart.com USA LLC, et al.*, the
5 first filed case in this District, which is presently assigned to the Honorable Phyllis J. Hamilton.

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7 Dated: January 29, 2009

Respectfully submitted:

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